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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

FEB 6 2003

STATE OF ILLINOIS
Pollution Control Board

ABITEC CORPORATION,)
)
 Petitioner,)
)
 v.)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

PCB 03-95
(Permit Appeal – Air)

NOTICE OF FILING

TO: Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Carol Sudman
Hearing Officer
Illinois Pollution Control Board
600 S. Second Street, Suite 402
Springfield, Illinois 62704

PLEASE TAKE NOTICE that I have today filed with the Office of the Pollution Control Board the **JOINT MOTION TO STAY THE EFFECTIVENESS OF SECTIONS 5.10 AND 7.1.13 OF ABITEC CORPORATION'S CLEAN AIR ACT PERMIT PROGRAM PERMIT** and **MEMORANDUM FOR JOINT MOTION TO STAY THE EFFECTIVENESS OF SECTIONS 5.10 AND 7.1.13 OF ABITEC CORPORATION'S CLEAN AIR ACT PERMIT PROGRAM PERMIT**, copies of which are herewith served upon you.



Neal H. Weinfield

Neal H. Weinfield, Esq.
Bryan E. Keyt, Esq.
Thor W. Ketzback, Esq.
Bell, Boyd & Lloyd LLC
Three First National Plaza
70 West Madison Street
Chicago, Illinois 60602
Telephone: 312.372.1121
Facsimile: 312.827.8000

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CERTIFICATE OF SERVICE

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STATE OF ILLINOIS
Pollution Control Board

I, the undersigned, certify that I have served the attached **JOINT MOTION TO STAY THE EFFECTIVENESS OF SECTIONS 5.10 AND 7.1.13 OF ABITEC CORPORATION'S CLEAN AIR ACT PERMIT PROGRAM PERMIT** and **MEMORANDUM FOR JOINT MOTION TO STAY THE EFFECTIVENESS OF SECTIONS 5.10 AND 7.1.13 OF ABITEC CORPORATION'S CLEAN AIR ACT PERMIT PROGRAM PERMIT** by depositing said document in the United States Mail via Certified Mail in Chicago, Illinois on February 6, 2003, upon: the following persons:

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Carol Sudman
Hearing Officer
Illinois Pollution Control Board
600 S. Second Street, Suite 402
Springfield, Illinois 62704



Neal H. Weinfield

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PCB 03-95
(Permit Appeal – Air)

**JOINT MOTION TO STAY THE EFFECTIVENESS OF SECTIONS 5.10 AND 7.1.13 OF
ABITEC CORPORATION'S CLEAN AIR ACT PERMIT PROGRAM PERMIT**

Petitioner, ABITEC CORPORATION ("ABITEC"), and Respondent, THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("IEPA") submit its Joint Motion to Stay the Effectiveness of Sections 5.10 and 7.1.13 of ABITEC's Clean Air Act Permit Program ("CAAPP") permit pursuant to 35 Ill. Adm. Code 101.514(c). In support of this Motion, ABITEC submits its Memorandum to Stay the Effectiveness of Sections 5.10 and 7.1.13 of ABITEC Corporation's Clean Air Act Program Permit.

WHEREFORE, ABITEC and IEPA respectfully request the IPCB to grant a stay of effectiveness of sections 5.10 and 7.1.13 of ABITEC's CAAPP permit until this matter is resolved either through a Final IPCB Order or through settlement.

Dated: February 5, 2003

Respectfully submitted,

ABITEC CORPORATION



Neal H. Weinfield

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY



Robb Layman

Neal H. Weinfield, Esq.
Bryan E. Keyt, Esq.
Thor W. Ketzback, Esq.
Bell, Boyd & Lloyd LLC
Three First National Plaza
70 West Madison Street
Chicago, Illinois 60602
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(Permit Appeal – Air)

MEMORANDUM FOR JOINT MOTION TO STAY THE EFFECTIVENESS OF SECTIONS 5.10 AND 7.1.13 OF ABITEC CORPORATION'S CLEAN AIR ACT PERMIT PROGRAM PERMIT

Petitioner, ABITEC CORPORATION ("ABITEC") submits its Memorandum For Joint Motion to Stay the Effectiveness of Sections 5.10 and 7.1.13 of ABITEC's Clean Air Act Permit Program ("CAAPP") permit pursuant to 35 Ill. Adm. Code 101.514(c). In support of this Memorandum, the parties state the following:

1. On December 31, 2002, ABITEC filed a petition to appeal sections 5.10 and 7.1.13 of the CAAPP permit issued to it by IEPA on November 26, 2002. ABITEC argued in its petition that IEPA's Prevention of Significant Deterioration ("PSD") determination regarding ABITEC's Paris, Illinois facility ("Paris Facility") was incorrect. On page 25 of ABITEC's petition, it requested that the Illinois Pollution Control Board ("IPCB") stay the effectiveness of the November 26, 2002 CAAPP permit for the reasons referred to in its petition.
2. On January 27, 2002, ABITEC and the Illinois Environmental Protection Agency ("IEPA") participated in a teleconference with Hearing Officer Sudman. At the teleconference, ABITEC and IEPA agreed to schedule a follow up teleconference on January 30, 2003 to discuss, among other things, whether the IEPA would object to a stay of effectiveness of the above referenced sections of ABITEC's CAAPP permit.

3. On January 30, 2003, ABITEC and IEPA held a teleconference to discuss, among other things, an agreed motion to stay the effectiveness of section 5.10 and 7.1.13 of ABITEC's CAAPP permit. Both parties agreed that the remaining provisions of the permit are currently in effect.
4. Pursuant to previous IPCB rulings, the IPCB has identified five factors that it may refer to when deciding whether a stay of effectiveness is appropriate: (1) a certain and clearly ascertainable right that needs protection; (2) an irreparable injury will occur without the stay; (3) no adequate remedy at law exists; (4) a probability of success on the merits; and (5) environmental harm. *See Bridgestone/Firestone Off-Road Tire Company v. Illinois Environmental Protection Agency*, 2001 WL 1388357, 3 (2001). Without a stay of effectiveness of the CAAPP sections referred to in paragraph 3 of this memorandum, ABITEC would be required to commit significant resources to comply with PSD requirements before a proper legal determination on whether ABITEC is subject to PSD in the first place can be made on this matter. In addition, ABITEC and preceding owners of the Paris Facility have been subject to the 250 tons per year PSD threshold for volatile organic material ("VOM") emissions since the inception of the Paris Facility's operations. Allowing ABITEC to continue operating subject to the 250 tons per year PSD threshold for VOM emissions will not cause harm to the environment by causing an exceedence of the applicable National Ambient Air Quality Standard or other air quality provisions in the attainment area where the Paris Facility resides. Moreover, ABITEC will continue to comply with all other provisions of ABITEC's CAAPP permit, including stringent emission limitations, recordkeeping and reporting requirements currently in effect.

5. As represented by legal counsel, the IEPA does not object to a stay of both permit conditions challenged by ABITEC.
6. Pursuant to 35 IAC § 101.514(a), ABITEC is concurrently filing a 180 day waiver of the statutory the statutory decision deadline in a separate petition.

WHEREFORE, ABITEC and IEPA respectfully request the IPCB to grant a stay of effectiveness of sections 5.10 and 7.1.13 of ABITEC's CAAPP permit until this matter is resolved either through a Final IPCB Order or through settlement.

Dated: February 6, 2003

Respectfully submitted,

ABITEC CORPORATION



Neal H. Weinfield

Neal H. Weinfield, Esq.
Bryan E. Keyt, Esq.
Thor W. Ketzback, Esq.
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